

these potential problems and inequities is for the Commission to wait until the FCC addresses the jurisdictional status of VoIP services, and then impose NUSF requirements the FCC permits, if any, upon all VoIP providers, regardless of whether those providers are currently certified telecommunications companies in Nebraska.

4. Can the NUSF only be assessed on intrastate services?

Yes, and more specifically, the NUSF can only be assessed on intrastate **telecommunications** services. The recent opinion of the 5th Circuit in *AT&T Corp. v. Public Utility Commission of Texas*, 373 F.3d 641 (5th Cir. 2004) (“*AT&T Opinion*”) confirms this conclusion. As discussed in the *AT&T Opinion*, the Federal Universal Service Fund (“FUSF”) is supported by a charge on all interstate telecommunications service providers:

(d) Telecommunications carrier contribution

Every telecommunications carrier that provides **interstate telecommunications services** shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.¹⁹

Congress empowered states to collect funds from carriers providing intrastate telecommunications services. As with the federal universal service scheme, state USF schemes must be equitable and nondiscriminatory. Moreover, state universal service plans can only apply to carriers that provide “intrastate telecommunications services” and cannot burden or rely upon the federal universal service system:

(f) State authority

A State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. Every telecommunications carrier that provides **intrastate telecommunications services** shall contribute, on an

¹⁹ 47 U.S.C. § 254(d) (emphasis added).